

ogc/b-0515

25 June 1958

MEMORANDUM FOR: Mr. Saunders

SUBJECT : Apparent Conflict Between 36 Comp. Gen. 580
and Section 902, Title 5

1. Confirming our conversation of yesterday, after studying this question at some length and consulting with the office of the General Counsel of GAO, the situation appears to be about as follows. As you noted, the Comptroller General decision states that the method of computation of pay for the heads of departments is that prescribed by Section 84 of Title 5. This ruling seemed questionable since Section 902 of Title 5 specifically provides that Section 84 does not apply to "heads of departments or of independent establishments or agencies." The answer seems to be that Section 902, which, like all other sections of the Code, is merely a codification of public laws passed by the Congress through the years, is in error. Section 902 derives from the Federal Pay Act of 1945 (59 Stat. 295), specifically Section 102(a). Section 102(a) provides that "this Act" shall not apply to heads of departments, etc. In codifying Section 102(a) into Section 902, the codifiers incorrectly substituted for the words "this Act" the words "Sections 84" (and a number of other sections). Since 84 existed long before the Federal Pay Act of 1945 was enacted, the reference in Section 102(a) of the Pay Act could not have intended Section 84.

2. The Comptroller General's legal office, upon our telephonic question to them, examined this problem concurrently with our own independent examination. They arrived at the same conclusion. Also, they were quite interested, and in fact grateful to have this apparent error brought to their attention, and they propose to so advise the appropriate committee of Congress with the view to its correction by Congress.

3. Since my conversation with you yesterday, I have also relayed the foregoing to Mr. Houston. Also, he is returning to you your draft study and other papers which you left with him yesterday.



Assistant General Counsel

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